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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO.571 OF 2004**

Sea Face Park Co-op. Hsg. Soc. Ltd. ..Appellant.

V/s.

Income Tax Officer ..Respondent.

Mr.P.J.Pardiwalla with Rajesh Poojari i/b. Mulla & Mulla C, B & C for appellant.

Mr.Ashok Kotangale with Arun D.Nagarjun for respondent.

**CORAM : F.I.REBELLO AND**
**J.P.DEVADHAR, JJ.**

**DATED : 24TH JULY, 2007.**

**P.C. :-**

1. The above appeal is preferred by the appellant against the order of I.T.A.T. It is contended that the Tribunal erred in law in considering the Judgment in Walkeshwar Triveni Co- operative Housing Society V/s. I.T.O. (ITA No.4937/Mum/2001) disposed of by order dated 4th July, 2003 by a Special Bench of the Tribunal.

The Tribunal was of the view that the Judgment was relevant for the purpose of considering the issue in controversy. Accordingly, thought it fit and proper to restore the matter to the file of the A.O. for fresh adjudication in the light of the aforesaid decision of the Special Bench.

2. The appellant herein by Misc. Application

sought to reagitate the issue contending that the Judgment of Walkeshwar Triveni Co-operative Housing Society (supra) would not be applicable to the facts of present case and the issues which were raised by them in the appeal ought to have been answered by the Tribunal. That application has been disposed of by an order dated 29th October, 2004. The learned Tribunal therein has set out that it would be open to the assessee to make all submissions on factual aspects.

3. The apprehension of the appellant is that in the proceedings before the assessing officer, it may be presumed that the contentions as urged before the I.T.A.T. are not available to them and that issue be covered by the Judgment in Walkeshwar Triveni Co-operative Housing Society (supra).

4. In our opinion, this is not so. All that the Tribunal has done is to remand the matter back to the assessing officer on a prima facie consideration and it will always be open to the appellant herein, to raise all contentions which are available to them before the assessing officer and also before the I.T.A.T. in the event the contentions urged by them are held against them. With the above clarification, in our opinion, no case is made out for interference.

5. Appeal is accordingly disposed of.

**(F.I.REBELL0, J.)**

**(J.P.DEVADHAR, J.)**